Communiqué

SEPTEMBER, 1998
In this issue:

Hit your Back Button to return to the top of this page.

President's Report A Snapshot View of What's on the Agenda	Changes to Law Society Act Affect Occasional Appearances
Review of Bar Admission Course	Risky Business
Allan's Odds and Ends	New Complaints Commissioner Appointed
Where Were You in 1960?	September Bencher Meeting Highlights
Reimbursement Claims Fund	Membership Changes
Notices of Suspension	Notices to the Profession

PRESIDENT'S REPORT

A Snapshot View of What's on the Agenda

This is my first report to the members of the Law Society. I thought I would take this opportunity to tell you about some matters that will likely be on future Bencher agendas.

Unauthorized Practice

Unauthorized practice is a difficult issue for the Law Society. Take a look at Sections 56 and 57 of The Law Society Act. Section 56 describes in some detail what activities are considered to be the practice of law. Subject to certain limitations in Sections 56 and 57, only lawyers authorized to practise in Manitoba are entitled to carry out those

activities. The public is therefore protected because the Law Society, which licenses those lawyers, has the authority to discipline them if they do not carry out their activities in a competent and ethical manner.

In the past few years, we have taken court action against two individuals who were obviously breaching the prohibition against unauthorized practice in our legislation. The commercial world is changing rapidly. It is perceived by many in our profession that unauthorized practice is far more prevalent today than in earlier times. The Law Society needs to take a clear and consistent approach in addressing unauthorized practice. A review of this issue is under way. Is unauthorized practice happening regularly? If so, who is doing it? How should the Law Society respond to it? A report on this issue is expected to be presented for review and debate by the Benchers at the January, 1999 meeting.

Mentorship

In the last 25 years, the number of practising lawyers in Manitoba has more than doubled. All have met the entrance requirements of the Law Society. Many lawyers, particularly those more recently called, are practising without the benefit of immediate access to more experienced lawyers with whom they can consult on difficult matters. This is a hard way to begin practising law, notwithstanding the obvious hard work and dedication demonstrated by most.

We think an expanded mentorship program would be of great value to many of the lawyers in the province and, consequently, to the public. The Law Society will be working with the Manitoba Bar Association to review the logistics of such a program.

Title Insurance

The Law Society has been involved in the title insurance issue on three fronts. At the national level, the Federation of Law Societies did not reach consensus at the August meeting on a national solution to the title insurance issue. Essentially, the differences between the Torrens systems in the western provinces and the non-Torrens systems in some of the eastern provinces make one single solution difficult to achieve. However, the Canadian Bar Association has indicated that they will be getting more actively involved in this issue at a national level. On a second front, because of the similarities in the Torrens systems in the four western provinces, the Law Societies in those provinces, in addition to considering a national response to title insurance, have been reviewing the possibility of a regional response dealing with the somewhat less complex issues posed by the Torrens system. On the local front, a committee of Law Society and Bar Association representatives are reviewing with the land titles offices means of improving the registration systems with the hope that funds can be released immediately upon closing of a transaction with minimal risk to the parties involved. Work on all three fronts is ongoing.

Multi-disciplinary Practices

Multi-disciplinary practices have been defined as business arrangements in which individuals with different professional qualifications practise together in partnerships and combine their different skills in providing advice and counsel to the consumers of their services. The Code of Professional Conduct in Manitoba prohibits lawyers from sharing fees with non lawyers. Therefore, there is currently a prohibition in Manitoba, and in other provinces, with lawyers being partners with non lawyers. Such partnerships exist and flourish in some countries and are prohibited in others. There are a great many issues involved in multi-disciplinary partnerships that go to the very root of our ability to be a self-governing profession. The Law Society of Upper Canada has just completed a significant study on these partnership and it will be reviewed by the Federation of Law Societies of Canada to see whether a common national approach to such partnerships can be achieved. This issue will eventually come back to the Benchers in Manitoba for consideration. However, we are likely many months away from considering this issue.

Libraries

The Law Society will be taking over the Great Library and the rural libraries effective April 1, 1999. These libraries will be run by a non-profit corporation that will be controlled by the Law Society. Government funding will be reduced over the next five years at which time it will end entirely. The Law Society faces a considerable challenge in ensuring that library services remain available and affordable to members. The establishment of this separate library entity is underway at the present time.

Law Society Rules

A thorough review of our rules has just begun with at least three objectives in mind. First, we want to ensure that our rules are internally consistent in style and substance. They have been amended many times; inconsistencies inevitably follow. Second, the rules must be "modernized". For example, nothing in the rules allows for electronic transfer of trust funds. Third, many feel we simply have too many rules. The rules are intended to provide reasonable protection to the public. Rules that don't protect the public but unnecessarily complicate the lives of lawyers ought to be repealed. A full report on our rules will be dealt with by the Benchers at a future meeting.

Monitoring

In the last few years the Benchers have established a new governance model. This model articulates the "ends" which the Benchers expect the Law Society to achieve. A vital part of the governance model is the process of monitoring, in which the C.E.O. reports to the Benchers on various aspects of Law Society activities so that the Benchers can be satisfied that the goals of the Law Society are being met. Over the next several months, we will be receiving full monitoring reports from our C.E.O. in the major areas of Law Society activities including professional education, complaints investigation and discipline, auditing and insurance.

Incorporation of Professionals

During the last throne speech, the government stated its willingness to allow professionals to incorporate. This would likely require amendments to *The Law Society Act* and Rules. We will be reviewing these issues with other professional organizations in order to provide our comments to the government.

I welcome comments from members of the Law Society on any of these issues.

Changes to Law Society Act Affect Occasional Appearances

In 1994 the Law Society of Manitoba, together with other Canadian law societies, signed the Inter-Jurisdictional Practice Protocol, designed to ease restrictions on the temporary mobility of lawyers. Implementation of the Protocol required amendments to the governing legislation of all law societies. In Manitoba, amendments to *The Law Society Act* have now been approved, as have amendments to the Law Society Rules. Internal procedures have also been adopted for implementation of the Protocol. The end result, in most cases, is that the Law Society of Manitoba will no longer be approving requests for occasional appearance by lawyers who are called to the Bar in other Canadian jurisdictions.

A lawyer practises occasionally if he or she practises law in Manitoba on not more than 10 matters and for not more than a total of 20 days during any 12 month period.

A lawyer must meet five tests to be able to carry on an occasional practice in Manitoba:

- He or she must be a member in good standing of another Canadian governing body (including a notary member of the Chambre des Notaires du Quebec);
- He or she must carry professional liability insurance and defalcation coverage reasonably comparable to Manitoba coverage;
- The professional liability and defalcation coverage must cover the lawyer's Manitoba practice of law;
- He or she must not be the subject of criminal proceedings in any jurisdiction; and
- He or she must not be the subject of disciplinary proceedings in any jurisdiction.

If a lawyer meets these five tests, he or she can practice occasionally in five ways:

1. He or she can appear as counsel in the Manitoba Court of Appeal, Queen's Bench or Provincial Judges Court **if** the appearance is done in consultation with a Manitoba lawyer.
2. He or she can appear as counsel before an Administrative Tribunal which does not normally allow appearances by non-lawyers **if** the appearance is done in consultation with a Manitoba lawyer.

3. He or she can practice law which is specific to Manitoba (for example real estate) if the practice is in consultation with a Manitoba lawyer.
4. He or she can appear in Manitoba before the Supreme Court of Canada, the Tax Court of Canada, a Federal Administrative Tribunal or a Provincial Administrative Tribunal which allows appearances by non-lawyers.
5. He or she can practice law which is not specific to Manitoba.

In all of the above noted situations, the non-Manitoba lawyer is not required to notify the Law Society of Manitoba of his or her occasional appearance or practice. This "no check-in system" requires non-Manitoba lawyers to act honourably in complying with the provisions of the Protocol.

Non-Manitoba lawyers must make application to the Society in all other circumstances, for example, if they intend to practice or appear as counsel more than occasionally, appear or practice without consulting a Manitoba lawyer, or if they are currently the subject of criminal or disciplinary proceedings in any jurisdiction. A filing fee of $100 must accompany the completed application form.

The Inter-Jurisdictional Practice Protocol has been implemented to varying degrees in other Canadian jurisdictions. Manitoba lawyers wishing to practice occasionally in other jurisdictions should contact the Law Society in that particular jurisdiction for specific assistance. Additional information about occasional practice and appearance by non-Manitoba lawyers in this province may be obtained from the Law Society office or downloaded from the Society's web site.

Review of Bar Admission Course

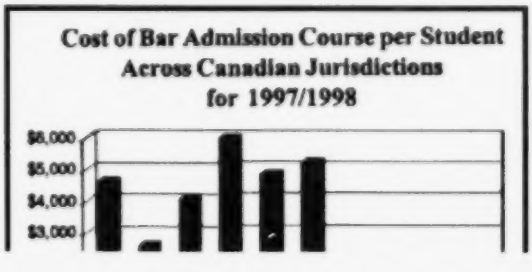
Scheduling and Cost to be Examined

In August, the Admissions and Education Committee approved a review of the format the Bar Admission Course. One key element of the review will be to solicit the views of the members of the profession to find the best means of maintaining our high-quality course, while addressing certain perceived problems with the delivery format.

Since 1975, Manitoba has been the only Canadian jurisdiction to deliver the course on Fridays throughout the articling year. Many Manitoba practitioners might agree that this model has proven to be a very effective means of integrating course lectures and exercises directly into the articling experience, and that this unique advantage should not be underestimated. This benefit has not come without a cost, however.

Through the years, class evaluations consistently showed comments that students have a very difficult time juggling their office obligations with their course assignments every week. More and more, workplace assignments intrude into class time, as principals and students often ask permission for students to be away from class to tend to ongoing practice matters. Such permission is generally granted, but it can be argued that the cumulative effect is to compromise the overall educational experience.

In addition to problems balancing class and office demands, the present model is relatively expensive. This year's version of a national survey of bar admission course costs shows Manitoba's course as the most expensive of all Canadian jurisdictions – just under $6,000 per student, of which the student pays $1450. Major components of those expenses, which are not paid in other provinces, are weekly travel costs for students outside Winnipeg, and the expense of year-round classroom and administrative availability.



A quick review of the formats of other jurisdictions shows that although details vary, bar admission courses in other provinces generally consist of three sections. Several weeks of time at the beginning of the year are spent exclusively in the classroom. Students then article full time in the firms for about ten months. At the end of the year, several more weeks are devoted solely to classes. Prior to 1975, this format was also used in Manitoba.

The task set by the Admissions and Education Committee in the bar admission review is to consider the advantages and disadvantages of other formats of delivering a bar admission course. The final goal of the review is to find a model that would help alleviate the perceived problems, without compromising the curriculum and educational integrity of the bar admission course. To this end, your input is essential. Please send your comments on this issue to the Legal Studies Department at the Law Society of Manitoba. In the meantime, if you have any questions, please contact Sheila Redel, Director of Professional Education.

Risky Business

The other day I bumped into a woman who worked as an elevator operator in the Paris Building in 1974. In 1974 I was practising law on the 9th floor of the building. On the 8th floor was the firm of Goslov Pullan Satran and Guld. A classmate of mine, Ron Sirkis, worked there and he and I had an informal arrangement.

Ron would refer clients to me for independent legal advice and vice versa. I'd generally charge $50 for that independent advice. I'd look at the document and make some basic inquiries to ensure that the client understood it. I'd keep a few notes, but rarely kept copies of the document or opened a file.

I was happy referring matters to Ron because it was efficient. I could call him (as a solicitor he was usually at his desk) and in about half an hour the deed was done. I suspect many of you have had a similar arrangement. Your clients frequently just want to get the matter completed. You know that to make the transaction work, the client needs independent legal advice. You have an ongoing relationship with another lawyer that leads you to believe that she will cheaply and efficiently give the client what he wants.

I am told by some of you that those kinds of friendly relationships are getting harder to find. Independent legal advice has become risky business. Picture if you will the lawyer down the block sending over a client toting a Separation Agreement. The client is happy with the Agreement and he clearly understands the contents. All he wants to do is sign it and be done with it.

You are in a dilemma. While the client is happy today with the Agreement, he may not be in the future and we all know who he is going to hold responsible. In order to fully inform him about his rights, you need, among other things, adequate financial disclosure. This will, alas, take time, effort and money. Remember the client just wants it done, so now he is annoyed and wondering why he was referred to a maniac who won't do what she is told.

Then there are those tricky pension issues (an insurance claim just waiting to happen). To give adequate advice you need to know whether a pension or pensions exist. If a pension does exist, you need to know the value of it.

The lawyer that referred the client wasn't being sneaky. He drew up an Agreement that accurately reflected the wishes of both parties. He knows he can't properly act for both, so he sent one party to you for independent advice. He fully expects you to satisfy yourself that the Agreement reflects that client's intentions and to sign off. He is not likely, however, expecting a request for financial disclosure and a lengthy delay while you hunt up relevant pension information. So now you have an annoyed client and an annoyed colleague.

Times change. Ron Sirkis doesn't practice law in Winnipeg anymore; the only surviving partner of Goslov Pullan Satran and Guld is my good friend, Gordon Pullan; and the Paris Building no longer has elevator operators. It's beginning to look like independent legal advice ain't what it used to be either.

Allan's Odds and Ends

- I have a small collection of favourite Latin legal maxims. Jack Chapman just contributed *"sugere et anhelare eodem tempore fieri non potest"* to my collection. (You can't suck and blow at the same time). My favourite is *"semper ubi sub ubi"* which is a maxim I encourage all of you to live by. I'd be happy to add your favourite to my collection.

- The Insolvency Institute of Canada awards prizes for outstanding research and analysis in the fields of insolvency and creditors remedies. For information, please contact David S. Ward c/o The Insolvency Institute of Canada, Suite 2100, 40 King

- Street West, Toronto, Ontario, M5H 3C2, Fax (416) 360-8877, E-Mail dward@casselsbrock.com.

- Welcome to Perry Derksen, our newly elected student Bencher. Perry is currently articling with Federal Justice.

- We have changed our e-mail addresses. They are made up of our first initial and our last name, followed by @lawsociety.mb.ca. For example: *afineblit@lawsociety. mb. ca.* Don't forget to check out our website at ***www. lawsociety. mb. ca.***

- Michelle Adrian, formerly of Taylor McCaffrey, has joined the Law Society as a Complaints Investigator, replacing Bev Padeanu who has taken a position as Researcher with the Court of Appeal. We wish Bev well and look forward to even more erudite Court of Appeal judgements in the future.

New Complaints Commissioner Appointed

Rick Frost, the Executive Director of the Winnipeg Foundation and the former City of Winnipeg Chief Commissioner) has been appointed the Law Society's new Complaints Commissioner, replacing Paula McDonald who resigned when her term expired at the end of April.

For those of you who have forgotten (or never knew), the role of the Complaints Commissioner is to review, on request, staff decisions to dismiss complaints prima facie. About one-third of approximately 300 complaints we receive annually are dismissed by staff, either because we believe the Law Society has no jurisdiction with respect to the matter or because we believe the complaint does not merit investigation.

Approximately 20% of those dismissals are appealed annually to the Complaints Commissioner, who has the power to order in appropriate circumstances that the complaint be investigated.

Where Were You in 1960?

While cleaning out the basement, I came across a pile of old Annual Reports. They contain a wonderful history of the profession. And thus, a new Communiqu6 feature was born: Where Were You In... This month we are featuring the Annual Report from 1960. Where was I in 1960? Watching "Leave It To Beaver" of course!

The Law Society's 1960 Annual Report records A. H. Warner, Q.C., as President of the Law Society and Harold St. George Stubbs, Q.C., as Secretary/Treasurer and Editor of the Manitoba Reports. Reg Russel had just completed 50 years of service as Librarian and Assistant Secretary/Treasurer, a record which makes Ryan Sasaki look like a rookie.

The Law Society had several standing committees and a few special committees in 1960, including the Needy Persons Advisory Committee, chaired by Archie Micay whose recent death is noted in this Communiqué.

The Annual Report notes that a referendum was held to determine if the Law Society should continue to publish the Manitoba Reports (I 85 in favour and 177 against).

It is reported that the Law Society asked the Attorney General to provide a grant to pay the cost of counsel at the Winnipeg Police Court. The Attorney General is reported to have refused the grant request and suggested the crown prosecutor and probation officers be responsible for advising accused of their rights.

The Margaret Hypatia Crawford Award (which is still being awarded today) for highest standing in the final year of law was awarded to Vern Simonsen.

There were 713 members of the Law Society in 1960. Nine of those members were barristers only. You will recognize many of the 38 names of the students who are reported to have received their call to the Bar in 1959. Names like Al Zivot, Frank Steele, Guy Kroft, Michael Mercury, Wes Swail, Barry Krawchuk, Robert Steen, Nathan Nurgetz, Pat Ferg give you a flavour of the members of this distinguished class.

Next Issue: *Where Were You In ... 1982?*

September Bencher Meeting Highlights

The meeting took place in conjunction with the Western Bar Annual Meeting and Benchers enjoyed the opportunity to meet with lawyers from all over western Manitoba.

The Benchers approved a revised Practice Direction dealing with the use of trust funds prior to the issuance of title. It is enclosed with these materials. The Title Insurance Committee continues to review the impact and role of title insurers on current conveyancing practice. In the interim, Practice Direction 98-01 is intended to address the prudent use of trust funds prior to the issuance of title, pending any changes in standard conveyancing practice, that may result from the work of the Title Insurance Committee.

Benchers approved payments totalling $8,274.50 with respect to seven claims against the Reimbursement Claims Fund. Benchers also passed rule amendments permitting the Reimbursement Claims Fund Committee to approve claims for the face value of the loss without requiring Bencher approval.

Rule changes were also approved which were necessary to implement the policy decisions taken by Benchers at their June meeting regarding the public release of Law Society information. A copy of the report of the Release of Information Committee, which was adopted by the Benchers in June, is available to all members on request.

Benchers received and discussed reports from the Admissions and Education Committee, the Investment Committee, the Complaints Investigation Committee, the Discipline Committee, the Competence Committee, the Practice and Ethics Committee and reports from the President and Chief Executive Officer.

Reimbursement Claims Fund

On September 18, 1998, the Benchers approved the following payments from the Reimbursement Claims Fund:

- *$500.00 to Mr. K. arising out of the practice of Thomas Andrew Bunn;*
- *$4,100.00 to Ms. R. and Mr. K. arising out of the practice of Thomas Andrew Bunn;*
- *$600.00 to Mr. G. arising out of the practice of Thomas Andrew Bunn;*
- *$500.00 to Mrs. B. arising out of the practice of Thomas Andrew Bunn;*
- *$2,000.00 to Mr. M. arising out of the practice of Thomas Andrew Bunn;*
- *$574.50 to Mr. And Mrs. M. arising out of the practice of Victor Brian Olson;*
- *$321.07 to the Estate of H. arising out of the practice of Dennis Lee Wohlgemuth.*

Membership Changes

The following members have voluntarily changed their status as indicated on the dates shown:

Practising to Non-Practising:

July 1, 1998 Lou Ann Van Schepdael
July 1, 1998 Gideon Z. Bloch
July 15, 1998 John M. Ginnell, Q.C.
August 1, 1998 Susan Cepanec
September 1, 1998 Shahla Khan

September 1, 1998 Shane H.I. Lasker
September 1, 1998 Miranda K. Harder

Non-Practising to Practising:

July 2, 1998 Estella Muyinda
August 1, 1998 Michael J. Styczen
August 4, 1998 Amy R. Gough Farnworth
August 4, 1998 Dorothy V. Pedlar
September 1, 1998 Brenda L. Cherkas
September 1, 1998 Alexander C. Phillips
September 8, 1998 Georgina A. Garrett

Practising to Inactive:

June 30, 1998 Lori A. Corrigal
July 1, 1998 Sharon-Lynn J. Cartmill
July 1, 1998 Ernest A. Wehrle
July 1, 1998 Dana S.C. Hansson
July 1, 1998 Donna A. Brownridge
August 1, 1998 Gary P. Dolovich
August 1, 1998 A. Gabrielle Zimmer
August 1, 1998 Kenneth G. Davie
August 1, 1998 Renee D. Wickler
September 1, 1998 James J. Mentas
September 3, 1998 Jocelyn A. Rogers

Inactive to Practising:

July 1, 1998 Myles Courchene
August 4, 1998 Winona M. Embuldeniya
August 5, 1998 Angela L. Evans
August 24, 1998 D. Lynne Wilson
August 24, 1998 Joel I. Katz
August 31, 1998 Kara L. Crawford
September 1, 1998 James C.R. Ludlow
September 1, 1998 Diane M. Kelly
September 15, 1998 Donald H. Layh
September 16, 1998 Keith I.M. Heming

Transfer from Another Province:

The following members were called to the Bar of Manitoba on July 13, 1998 and are now entitled to practice law in this jurisdiction, having fulfilled the requirements of Rule 99:

***David J. Flett** of the Law Society of Saskatchewan*
***John J. Van Massenhoven** of the Law Society of Upper Canada*

Call to the Bar

The following members were called to the Bar of Manitoba on the date indicated after having successfully completed the requirements of the bar admission course and articling program.

***A. Tom Alevizos** July 13, 1998*
***G. Carter Cottam** July 28, 1998*

Notices of Suspension

***TAKE NOTICE** that **JERRY GEORGE ROSS** was suspended from the practice of law as follows:*

a. *Effective August 30, 1998 by operation of Rule 118(1)(a) of the Rules of The Law Society of Manitoba for failing to pay an outstanding fine and costs in the amount of $6,900.00;*
b. *Effective August 31, 1998 by resolution of the Complaints investigation Committee of The Law Society of Manitoba pursuant to subsection 50(1) of The Law Society Act until; such time as the governing body or a Committee thereof rescinds the suspension;*
c. *Effective September 1, 1998 by resolution of the Discipline Committee of The Law Society of Manitoba for failing to pay outstanding fine and costs in the amount of $2,040.50; and*
d. *Effective September 24, 1998 by operation of Rule 112(3) of the Rules of The Law Society of Manitoba for failing to pay outstanding late payment penalty in the amount of $300.00*

DATED at the City of Winnipeg, in the Province of Manitoba, this 25th day of September, A.D., 1998.

***TAKE NOTICE** that by resolution of the Discipline Committee of The Law Society of Manitoba on the 9th day of September, 1998, **ROBERT LEWIS FISHER** was found guilty of professional misconduct and was suspended from the practice of law for a period of three months commencing that date. The suspension will expire on December 9, 1998.*

***DATED** at the City of Winnipeg, in the Province of Manitoba, this 24th day of September, A.D., 1998.*

Notices to the Profession

NOTICE OF BENCHERS' MEETING

*Notice is hereby given that a meeting of the Benchers of the Law Society of Manitoba will be held on Thursday, **October 22, 1998 at 12:30 p.m.** in the Society's Boardroom, 219 Kennedy Street, Winnipeg, Manitoba. Members of the Society are encouraged to attend and to participate in the deliberations of the governing body.*

OUTSTANDING INTEREST ON CLIENT ACCOUNTS

Pursuant to Section 47 of The Law Society Act, a lawyer is entitled to charge interest on unpaid fees, charges or disbursements where the lawyer and client have so agreed. Such interest is calculated from a date that is at least one month after the date the bill is delivered to the client.

The rate of interest that may be charged shall not exceed the rate established under Section 161 of the Income Tax Act (Canada) on the date the bill is delivered. The interest rate effective for the period October 1, 1998 to December 31, 1998 is 9%.

1998 Queen's Counsel Appointments

The Queen's Counsel Appointment Committee will commence its deliberations in the near future with respect to the appointment of this year's Queen's Counsel. Anyone who wishes to make a recommendation for an appointment may write to the President of the Law Society, on a private and confidential basis, at the following address:

Douglas E. Finkbeiner, Q.C.
President
The Law Society of Manitoba
219 Kennedy Street
Winnipeg, Manitoba
R3C 1S8

Missed May's Communique? Click here.